

Regular Session, 2009

HOUSE BILL NO. 476

BY REPRESENTATIVES CONNICK, HENRY BURNS, CARTER, CHAMPAGNE,
FOIL, LEGER, LIGI, LITTLE, MILLS, PERRY, POPE, PUGH, ROBIDEAUX,
SIMON, SMILEY, JANE SMITH, TALBOT, TEMPLET, THIBAUT, AND
WILLMOTT AND SENATORS CROWE, DUPLESSIS, MICHOT, SMITH, AND
WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIME/SEX OFFENSES: Provides relative to the protection of children

1 AN ACT

2 To amend and reenact R.S. 14:81.4(A), (B)(2) and (4), and (E)(1), 91.1(A)(2), 91.2(A)(3)
3 and (4), and R.S. 15:538(A), (D)(1)(b) and (c), and (6)(b) and (c), and to enact R.S.
4 14:91.3 and 91.4, relative to the protection of children; to amend the crime of
5 prohibited sexual conduct between educator and student; to amend the crime of
6 unlawful presence of a sexually violent predator to apply to child care facilities and
7 family child day care homes; to amend the crime of unlawful presence of a sex
8 offender to apply to certain locations; to create the crime of unlawful participation
9 in a child-related business and to provide for criminal penalties; to create the crime
10 of contributing to the endangerment of a minor and to provide for criminal penalties;
11 to provide relative to conditions of probation, parole, or suspension of sentence for
12 convicted sex offenders with respect to volunteer work activities; and to provide for
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 14:81.4(A), (B)(2) and (4), and (E)(1), 91.1(A)(2), 91.2(A)(3) and
16 (4) are hereby amended and reenacted and R.S. 14:91.3 and 91.4 are hereby enacted to read
17 as follows:

1 §81.4. Prohibited sexual conduct between educator and student

2 A. Prohibited sexual conduct between an educator and a student is
3 committed when any of the following occur:

4 (1) An educator has sexual intercourse with a person who is seventeen years
5 of age or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age
6 difference of greater than four years between the two persons, when the victim is not
7 the spouse of the offender and is a student at the school where the educator is
8 assigned, employed, or working at the time of the offense.

9 (2) An educator commits any lewd or lascivious act upon a student or in the
10 presence of a student who is seventeen years of age or older, but less than ~~nineteen~~
11 twenty-one years of age, where there is an age difference of greater than four years
12 between the two persons, with the intention of gratifying the sexual desires of either
13 person, when the victim is a student at the school in which the educator is assigned,
14 employed, or working at the time of the offense.

15 (3) An educator intentionally engages in the touching of the anus or genitals
16 of a student seventeen years of age or older, but less than ~~nineteen~~ twenty-one years
17 of age, where there is an age difference of greater than four years between the two
18 persons, using any instrumentality or any part of the body of the educator, or the
19 touching of the anus or genitals of the educator by a person seventeen years of age
20 or older, but less than ~~nineteen~~ twenty-one years of age, where there is an age
21 difference of greater than four years between the two persons, when the victim is a
22 student at the school in which the educator is assigned, employed, or working at the
23 time of the offense using any instrumentality or any part of the body of the student.

24 B. As used in this Section:

25 * * *

26 (2) "School" means a public or ~~private~~ nonpublic elementary or secondary
27 school or learning institution ~~excluding~~ which shall not include universities and
28 colleges.

29 * * *

1 (4) "Student" includes students enrolled in a school who are seventeen years
2 of age or older, but less than ~~nineteen~~ twenty-one years of age.

3 * * *

4 E.(1) Whoever ~~commits the crime of prohibited sexual conduct between an~~
5 ~~educator and a student when the student is seventeen years of age or older, but less~~
6 ~~than nineteen years of age; violates the provisions of this Section~~ shall be fined not
7 more than one thousand dollars, or imprisoned for not more than six months, or both.

8 * * *

9 §91.1. Unlawful presence of a sexually violent predator

10 A. Unlawful presence of a sexually violent predator is:

11 * * *

12 (2) The physical residing of a sexually violent predator within one thousand
13 feet of any public or private elementary or secondary school, a day care ~~facility~~
14 center, group home, residential home, or child care facility as defined in R.S.
15 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground,
16 public or private youth center, public swimming pool, or free standing video arcade
17 facility.

18 * * *

19 §91.2. Unlawful presence of a sex offender

20 A. The following acts when committed by a person convicted of a sex
21 offense as defined in R.S. 15:541 when the victim is under the age of thirteen years
22 shall constitute the crime of unlawful residence or presence of a sex offender:

23 * * *

24 (3) The physical presence of the offender in, on, or within one thousand feet
25 of a public park, ~~or recreational facility, day care center, group home, residential~~
26 home, or child care facility as defined in R.S. 46:1403, or a family child day care
27 home as defined in R.S. 46:1441.1.

28 (4) The offender establishing a residence within one thousand feet of any
29 public park, ~~or recreational facility, day care center, group home, residential home,~~

1 or child care facility as defined in R.S. 46:1403, a family child day care home as
2 defined in R.S. 46:1441.1, playground, public or private youth center, public
3 swimming pool, or free standing video arcade facility.

4 * * *

5 §91.3. Unlawful participation in a child-related business

6 A. No person convicted of a sex offense as defined in R.S. 15:541, whose
7 offense involved a person under the age of thirteen years, shall own, operate, or in
8 any way participate in the governance of those child care facilities as enumerated in
9 R.S. 46:1403 or in family child day care homes as defined in R.S. 46:1441.1.

10 B. Whoever violates the provisions of this Section shall be fined not more
11 than one thousand dollars, imprisoned with or without hard labor for not more than
12 one year, or both.

13 §91.4. Contributing to the endangerment of a minor

14 A. No person shall knowingly employ a person convicted of a sex offense
15 as defined in R.S. 15:541, whose offense involved a minor child, to work in any of
16 the following facilities:

17 (1) A day care center, residential home, community home, or group home
18 or child care facility as defined in R.S. 46:1403; or

19 (2) A family child day care home as defined in R.S. 46:1441.1.

20 B. No person shall knowingly permit a person convicted of a sex offense as
21 defined in R.S. 15:541 physical access to any of the following facilities:

22 (1) A day care center, residential home, community home, group home, or
23 child care facility as defined in R.S. 46:1403; or

24 (2) A family child day care home as defined in R.S. 46:1441.1.

25 C. Whoever violates the provisions of this Section shall be fined not more
26 than one thousand dollars, imprisoned for not more than six months, or both.

Section 2. R.S. 15:538(A), (D)(1)(b) and (c), and (6)(b) and (c) are hereby amended and reenacted to read as follows:

§538. Conditions of probation, parole, and suspension or diminution of sentence

A.(1) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from engaging in any business or volunteer work activity which provides goods, services, instruction, or care to and requires the offender to engage in a significant amount of direct contact with minor children.

(2) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from engaging in any volunteer work activity which provides goods, services, instruction, or care to or requires the offender to engage in direct contact with minor children. When the volunteer activity does not require the offender to engage in such contact with minor children due to the nature of the volunteer activity, the sex offender shall nonetheless provide notice to the officer or director of the volunteer organization of his status as a convicted sex offender prior to engaging in any volunteer work activity with the organization. No volunteer organization, nor any officer or director thereof, shall be civilly liable for any injury caused by a violation of the provisions of this Subsection.

* * *

D.(1) No sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from:

* * *

(b) Going in, on, or within one thousand feet of a day care facility center, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

(c) Physically residing within one thousand feet of any public or private elementary or secondary school, day care ~~facility center~~, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

* * *

(6) Any sexual offender, whose offense involved a minor child, and who was placed on probation or was paroled prior to August 15, 2004, and is on probation or parole as of August 15, 2005, shall have the following prohibitions added as conditions of probation and parole pursuant to Code of Criminal Procedure Articles 895 and 896 or R.S. 15:574.4 and R.S. 15:574.7:

* * *

(b) Going in, on, or within one thousand feet of a day care ~~facility center~~, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

(c) Physically residing within one thousand feet of any public or private elementary or secondary school, day care ~~facility center~~, group home, residential home, or child care facility as defined in R.S. 46:1403, a family child day care home as defined in R.S. 46:1441.1, playground, public or private youth center, public swimming pool, or free-standing video arcade facility.

* * *

Section 3. This Act shall become effective on September 1, 2009.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Connick

HB No. 476

Abstract: Provides for the protection of children by prohibiting certain forms of contact by sex offenders.

Present law (R.S. 14:81.4) prohibits sexual conduct between educator and student when the student is 17 years of age or older, but less than 19 years.

Proposed law amends present law to apply to students who are 17 years of age or older, but less than 21 years, where there is an age difference of greater than four years and clarifies that such provision applies only to secondary schools.

Present law (R.S. 14:91.1) prohibits sexually violent predators from residing within 1000 ft. of a school, day care facility, playground, public or private youth center, public swimming pool, or free standing video arcade.

Proposed law retains present law and adds child care facilities, group homes, residential homes, and family child day care homes.

Present law (R.S. 14:91.2) prohibits sex offenders from residing, or being physically present, within 1000 ft. of a school, public park, or recreational facility.

Proposed law retains present law and adds day care centers, child care facilities, group homes, residential homes, and family child day care homes to the restrictions regarding physical presence. Adds those same facilities in addition to any playground, public or private youth center, public swimming pool, or free standing video arcade facility with regard to residence restrictions.

Proposed law (R.S. 14:91.3) creates the crime of unlawful participation in a child-related business. Prohibits convicted sex offenders whose offense involved a person under the age of 13 from owning, operating, or participating in the governance of those child care facilities or family child day care homes. Provides for the following criminal penalties: a fine of up to \$1,000, imprisonment with or without hard labor up to one year, or both.

Proposed law (R.S. 14:91.4) creates the crime of contributing to the endangerment of a minor, which includes:

- (1) The employment of a sex offender in a day care center, residential home, community home, group home child care facility, or family child day care home.
- (2) The permitting of a sex offender to have physical access to a day care center, residential home, community home, group home child care facility, or family child day care home.

Provides for the following criminal penalties: a fine of up to \$1,000, imprisonment up to six months, or both.

Present law (R.S. 15:538) provides that sex offenders shall not be eligible for parole, unless as a condition thereof, the offender is prohibited from engaging in business or volunteer activities which would require the offender to engage in a significant amount of direct contact with children.

Proposed law retains present law with regard to business activities. Amends restrictions on volunteer activities by prohibiting sex offenders from volunteering where goods, services, instruction, or care will be provided to minor children or where the offender will engage in direct contact with children. When the volunteer activity does not require the offender to engage in such contact with minor children due to the nature of the volunteer activity, the sex offender shall nonetheless provide notice to the officer or director of the volunteer organization of his status as a convicted sex offender prior to engaging in any volunteer work activity with the organization. Provides for a limitation of liability for the organization, or any officer and director thereof, for failure to comply with proposed law.

Present law provides that sex offenders shall not be eligible for parole, unless as a condition thereof, the offender is prohibited from residing or being physically present within 1000 ft. of a day care facility, playground, public or private youth center, public swimming pool, or free-standing video arcade.

Proposed law retains present law except that it amends definitions of "day care facility" to "day care center" and adds "child care facilities", "group homes", "residential homes", and "family child day care homes".

(Amends R.S. 14:81.4(A), (B)(2), and (4), and (E)(1), 91.1(A)(2), 91.2(A)(3) and (4), and R.S. 15:538(A), (D)(1)(b) and (c), and (6)(b) and (c); Adds R.S. 14:91.3 and 91.4)